

REMARKS

The Non-Final Office Action dated May 25, 2010 has been received and reviewed. Claim 1 has been amended herein and claim 10 has been cancelled. Thus, claims 1-9 remain pending. Care has been exercised to introduce no new matter. Applicants respectfully request reconsideration of the present Application in view of the above amendments and the following remarks.

Rejections based on 35 U.S.C. § 101

Claims 1-8 have been rejected under 35 U.S.C. § 101 because the claimed invention is ostensibly directed to non-statutory subject matter. In particular, claims 1-8 were said to not be “tied to a particular machine and can be performed without the use of a particular apparatus.” *Office Action dated 5/25/2010*, Pg. 3. Claim 1 has been amended to recite a computer-implemented method including a first and second computer process executed by one or more computing devices. Accordingly, it is respectfully submitted that claims 1-8, as amended, are directed to statutory subject matter.

As such, Applicants respectfully request withdrawal of the 35 U.S.C. § 101 rejections of independent claim 1. As claims 2-8 depend, either directly or indirectly, from independent claim 1, Applicants respectfully request withdrawal of the § 101 rejection of these claims for at least the above-cited reasons.

Claim 10 has been rejected under 35 U.S.C. § 101 because “a computer-readable medium may include carrier signals per se.” *Id.* Claim 10 has been cancelled by way of the present communication and, as such, the rejection of this claim has been rendered moot.

Rejections based on 35 U.S.C. § 103

Claims 1, 3-7, 9, and 10 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,155,427 to Prothia, et al. (hereinafter “Prothia”) in view of Lovis et al, “Evaluation of a Command-Line Parser-based Order Entry Pathway for the Department of Veterans Affairs Electronic Patient Record,” Journal of the American Medical Informatics Association, Vol. 8, No. 5, Sep/Oct 2001, pp. 486-496 (hereinafter “Lovis”). Claim 10 has been cancelled by way of the present communication and, as such, the rejection of this claim has been rendered moot.

Applicants respectfully submit that Prothia fails to qualify as prior art because the filing date of Prothia is after the claimed priority date of the present application. “A 35 U.S.C. 103 rejection is based on 35 U.S.C. 102(a), (b), or (e), depending on the type of prior art reference use[d].” MPEP § 2141.01(I). To qualify as prior art under 35 U.S.C. § 102(a) or (b), the reference must have been patented or published before the invention thereof by the applicant for patent. *See* 35 U.S.C. §§ 102(a) and (b). Because Prothia was not even filed until October 30, 2002, after the present application’s priority claim of October 18, 2002, Prothia fails to qualify as a reference under 35 U.S.C. 102(a) or (b). In order to qualify as prior art under 35 U.S.C. § 102(e), the reference must have been filed before the invention by the applicant. *See* 35 U.S.C. § 102(e). However, Prothia has a filing date of October 30, 2002, which is after the priority filing date of the present application, which is October 18, 2002. Accordingly, because Prothia has a filing date that is after the priority filing date of the present application, Prothia fails to qualify as a prior art reference under 35 U.S.C § 102(e). Accordingly, because Prothia fails to qualify as prior art under any of 35 U.S.C. § 102(a), (b), or (e), it is improper to use Prothia to support a rejection under 35 U.S.C. § 103.

Based on the foregoing, Applicants respectfully submit that the *prima facie* requirements for a rejection under 35 U.S.C. § 103 have not been satisfied and that the rejection of claims 1, 3-7, and 9 under 35 U.S.C. § 103 should be withdrawn.

Claim 2 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Prothia in view of Lovis and further in view of U.S. Publication No. 2002/0165853 to Gogolak. Claim 2 depends directly from independent claim 1. In view of the above, it is respectfully submitted that Prothia is not available as a prior art reference and, therefore, a *prima facie* case of obviousness has not been established regarding independent claim 1. As such, withdrawal of the 35 U.S.C. § 103(a) rejection of claim 2 is respectfully requested for at least the above-cited reasons. *See, In re Fine*, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988) (a dependent claim is obvious only if the independent claim from which it depends is obvious); *see also*, MPEP § 2143.03.

Claim 8 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Prothia in view of U.S. Publication No. 2003/0074220 to Brandt and further in view of U.S. Publication No. 2003/0069880 to Harrison. Claim 8 depends directly from claim 1. In view of the above, it is respectfully submitted that Prothia is not available as a prior art reference and, therefore, a *prima facie* case of obviousness has not been established regarding independent claim 1. As such, withdrawal of the 35 U.S.C. § 103(a) rejection of claim 8 is respectfully requested for at least the above-cited reasons. *See, In re Fine*, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988) (a dependent claim is obvious only if the independent claim from which it depends is obvious); *see also*, MPEP § 2143.03.

CONCLUSION

For at least the reasons stated above, claims 1-9 are believed to be in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or asturgeon@shb.com (such communication via email is herein expressly granted) – to resolve the same. It is believed that no fee is due. However, if this belief is in error, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112, referencing attorney docket number CRNI.100525.

Respectfully submitted,

/ASHLEY N. STURGEON/

Ashley N. Sturgeon
Reg. No. 64,819

ANLZ/jc
SHOOK, HARDY & BACON L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108-2613
816-474-6550